

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W16-09

Title	Action Requested
Juvenile Law: Delinquency Defense Attorney Qualifications	Review and submit comments by January 22, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 5.664; approve form JV-700	July 1, 2016
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Nicole Giacinti, 415-865-7598 nicole.giacinti@jud.ca.gov
Hon. Jerilyn L. Borack, Cochair	
Hon. Mark A. Juhas, Cochair	

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes adopting rule 5.664 of the California Rules of Court and approving optional form JV-700, *Declaration of Eligibility to Represent Youth in Delinquency Court*, to conform to recent statutory changes that establish training requirements for attorneys who represent delinquent youth under Welfare and Institutions Code section 600.

Background

Assembly Bill 703 (Bloom; Stats 2015, ch. 369) added section 634.3 to the Welfare and Institutions Code to establish training requirements for attorneys who are appointed to represent delinquent youth.¹ Section 634.3 mandates establishment of a minimum number of training hours that attorneys must complete before assuming representation of delinquent youth, as well as establishment of topics that must be included in the training. The Judicial Council is required to adopt rules of court to implement the requirements stated in section 634.3. Accordingly, rule 5.664 specifies the topic areas and minimum hours of training attorneys representing delinquent youth are required to complete. Optional form JV-700 can be used by courts to ensure compliance with the standards stated in rule 5.664.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Proposal

The addition of rule 5.664 to the rules of court and optional form JV-700 will ensure conformance with the recently enacted provisions of Welfare and Institutions Code section 634.3, which require attorneys representing delinquent youth to meet certain training standards and requirements.

The Family and Juvenile Law Advisory Committee proposes that rule 5.664 of the California Rules of Court contain the following information in conformance with recent statutory changes:

- Rule 5.664 defines “competent counsel” as an attorney who is a member in good standing of the State Bar of California, who provides representation in accordance with Welfare and Institutions Code section 634.3(a)(1)–(3), and who has participated in the training requirements stated in rule 5.664. The rule provides that the court may require evidence of the competency of an attorney appointed to represent a youth in a delinquency proceeding.

Newly enacted section 634.3 states that counsel appointed to represent youth in proceedings under section 601 or 602 must “[p]rovide effective, competent, diligent, and conscientious advocacy....” Including this definition in rule 5.664 will conform the rules of court to this new statutory requirement.

- Rule 5.664 establishes that attorneys who represent delinquent youth must complete a minimum of 12 hours of training or education in juvenile law before representing delinquent youth—and eight hours each year thereafter. This requirement conforms to the mandate in section 634.3 that “minimum hours of training and education” be established for attorneys who represent delinquent youth.
- Rule 5.664 specifies the following topic areas that must be included in the 12 hours of training and education: an overview of delinquency law; adolescent development; education, special education, and school discipline; competence and mental health issues, including the capacity to commit a crime and the effect of trauma, child abuse, and family violence; counsel’s ethical duties; cultural competency and sensitivity to providing adequate care to lesbian, gay, bisexual, and transgender youth; immigration consequences and the requirements of Special Immigrant Juvenile Status; advocacy in the postdispositional phase; appellate advocacy; direct and collateral consequences of court involvement; securing effective rehabilitative resources; fitness hearing; and trial skills.

Newly enacted section 634.3 mandates that “required training areas” include, at a minimum, “an overview of juvenile delinquency law and procedure, child and adolescent development, special education, competence and mental health issues, counsel’s ethical duties, advocacy in the postdispositional phase, appellate issues, direct and collateral consequences of court involvement for a minor, and securing effective rehabilitative resources.” Elucidating the training areas listed above in rule 5.664 will conform the rules of court to the statutory requirements of section 634.3.

The Family and Juvenile Law Advisory Committee also proposes approval of a new optional form JV-700, *Declaration of Eligibility to Represent Youth in Delinquency Court*, which can be used by courts to confirm that attorneys representing delinquent youth have complied with the training standards stated in rule 5.664, including completing continuing education requirements. This form was modeled on local forms used by dependency courts to confirm compliance with training requirements in that field.

Comments, Alternatives Considered, and Policy Implications

The committee considered several different alternatives. First, the committee considered requiring a different number of required continuing education hours: i.e., 5 hours per year versus 8 hours per year, or 36 hours over three years. Ultimately, the committee decided that 8 hours per year of continuing education was appropriate. The committee also considered whether attorneys should be required to certify compliance with the continuing education requirements annually or every three years. Finally, the committee dedicated considerable discussion to whether to give courts a way to request documentation of completion of the training requirements. The committee considered creating a mandatory form but decided that creation of an optional form would allow courts to decide how they want to obtain proof of compliance.

Implementation Requirements, Costs, and Operational Impacts

This proposal may result in minimal additional record keeping if the presiding judge of the juvenile court elects to request use of form JV-700 and therefore copies need to be stored.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there knowledge areas integral to the practice of juvenile law that are not included in the enumerated training topic areas?
- Is 12 hours of initial training in the listed topics sufficient, and is it a standard that attorneys across the state can reasonably meet? If 12 hours is not enough, please explain why and provide an alternative suggestion. If 12 hours is too much, please explain why it is excessive and provide an alternative suggestion.
- Is the experience alternative that allows attorneys who have dedicated at least 50 percent of their practice over the three most recent years to opt out of the initial training requirement sufficient to ensure the high standard of representation required by AB 703 and Welfare and Institutions Code section 634.3?
- What is the appropriate amount of ongoing training that should be required for attorneys who represent delinquent youth?
- Should proof of compliance with ongoing training requirements be required annually or every three years? If it is required every three years, should that three-year cycle follow the attorney's MCLE compliance cycle or should it be three years from the date the attorney became eligible to represent delinquent youth?
- Should item 1b. on proposed form JV-700 provide additional guidance to attorneys about what information to include?
- Is the format of item 3 on form JV-700 sufficient? Instead of having two check boxes, should it simply state that the court may request additional documentation?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Cal. Rules of Court, rule 5.664, at pages 5–6
2. Proposed new form JV-700, at page 7
3. Assembly Bill 703,
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB703

1 **Rule 5.664. Training requirements for children’s counsel in delinquency**
2 **proceedings (§ 634.3)**

3
4 **(a) Definition**

5
6 “Competent counsel” means an attorney who is a member, in good standing, of the
7 State Bar of California, who provides representation in accordance with Welfare and
8 Institutions Code section 634.3(a)(1)–(3), and who has participated in training in the
9 law and practice of juvenile delinquency as defined in this rule.

10
11 **(b) Education and training requirements**

12
13 (1) Only those attorneys who have dedicated at least 50 percent of their practice to
14 juvenile delinquency and demonstrated competence during each of the most
15 recent three calendar years, or who have completed a minimum of 12 hours of
16 training or education during the most recent twelve-month period in the area of
17 juvenile delinquency, may be appointed to represent youth.

18
19 (2) Attorney training must include:

20
21 (A) An overview of delinquency law and related statutes and cases;

22
23 (B) Trial skills, including instruction on pretrial motions, introducing evidence
24 at trial, preserving the record for appeal, filing writs and notices of appeal,
25 and posttrial motions;

26
27 (C) Child and adolescent development, including training on interviewing and
28 working with adolescent clients;

29
30 (D) Competence and mental health issues, including capacity to commit a
31 crime and the effects of trauma, child abuse, and family violence, and
32 cross-over issues presented by youth involved in the dependency system;

33
34 (E) Counsel’s ethical duties, including racial, ethnic, and cultural understanding
35 and addressing bias;

36
37 (F) Cultural competency and sensitivity relating to, and best practices for,
38 providing adequate care to lesbian, gay, bisexual, and transgender youth;

39
40 (G) Understanding the effects of, and working with, victims of human
41 trafficking and commercial sexual exploitation of children and youth;

1 (H) Immigration consequences and the requirements of Special Immigrant
2 Juvenile Status;

3
4 (I) General and special education, including information on school discipline;

5
6 (J) Substance abuse;

7
8 (K) Securing effective rehabilitative resources, including information on
9 available community-based resources;

10
11 (L) Direct and collateral consequences of court involvement;

12
13 (M) Fitness hearings;

14
15 (N) Appellate advocacy; and

16
17 (O) Advocacy in the postdispositional phase.

18
19
20 **(c) Continuing education and training requirements**

21
22 (1) Every calendar year, each attorney must complete at least eight hours of
23 continuing education in the areas listed in (2).

24
25 (2) Each individual attorney is responsible for complying with the training
26 requirements in this rule; however, offices of the public defender, and other
27 agencies that work with delinquent youth, are encouraged to provide MCLE
28 training that meets the training requirements in (b)(2).

29
30 (3) Each individual attorney is encouraged to participate in policy meetings or
31 workgroups convened by the juvenile court and to participate in local trainings
32 designed to address county needs.

33
34 **(d) Evidence of competency**

35
36 The court may require evidence of the competency of any attorney appointed to
37 represent a youth in a delinquency proceeding, including requesting documentation
38 of trainings attended. The court may also require attorneys who represent youth in
39 delinquency proceedings to complete *Declaration of Eligibility to Represent Youth*
40 in *Delinquency Court (JV-700)*.

ATTORNEY: _____ STATE BAR NO: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____	FOR COURT USE ONLY DRAFT - NOT APPROVED BY THE JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
DECLARATION OF ELIGIBILITY TO REPRESENT YOUTH IN DELINQUENCY COURT	

I (name): _____ at (office address): _____
 and (phone number): _____, am an attorney at law licensed to practice in the state of California. My state bar number is: _____. I declare that, in compliance with Welfare and Institutions Code section 634.3 and rule 5.664, I completed the minimum requirements for training, education, and/or experience as stated below.

1. Initial Eligibility for Attorney

I declare that:

a. I am eligible for appointment to represent youth in delinquency proceedings because I have completed a minimum of twelve (12) hours of training or education in the areas of juvenile law listed in rule 5.664(b)(2) (*please list trainings, including dates*):

or

b. I am able to show that I have dedicated at least 50 percent of my practice each year during the most recent three calendar years to juvenile delinquency and have demonstrated competency in the practice of juvenile delinquency law, as described here:

2. Continuing Attorney

I declare that in the past twelve months, from: _____ to: _____, I have completed eight (8) hours of continuing training that meets the requirements stated in rule 5.664(c) (*please list trainings, including dates*):

3. Documentation

The court has not requested documentation.

I declare that I understand this certification must be renewed every twelve (12) months, as long as I represent any youth in a delinquency proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this: _____ day of (month): _____, (year): _____, at (city): _____, California.

Business Address:

Business Phone:

(Signature)